

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 12 June 2024

DOCKET NUMBER: AR20230011496

APPLICANT REQUESTS: Upgrade of his under other than honorable conditions (UOTHC) discharge to under honorable conditions (general) or honorable.

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- DD Form 214 (Armed Forces of the U.S. Report of Transfer or Discharge)
- Self-authored letters (2)

FACTS:

1. The applicant did not file within the 3-year time frame provided in Title 10, U.S. Code, section 1552(b); however, the Army Board for Correction of Military Records (ABCMR) conducted a substantive review of this case and determined it is in the interest of justice to excuse the applicant's failure to timely file.
2. The applicant states his lawyer told him he would be tried by a special court-martial and get a general discharge. He wrote his wife and told her about the discharge. They offered him a medical discharge if he stayed for two more months. He had an old injury on his left arm prior to entering the Army but was admitted into the Army anyway. He took the general discharge because he wanted to be with his new wife.
3. On 3 June 1971, the applicant enlisted into the Regular Army, for 3 years. The highest grade he attained was E-2.
4. On 17 October 1971, the applicant was reported as absent without leave (AWOL) and remained absent until he returned to military authorities on 2 January 1972.
5. Court-martial charges were preferred against the applicant on 5 January 1972, for violations of the Uniform Code Military Justice (UCMJ). His DD Form 458 (Charge Sheet) shows he was charged with one specification of going AWOL.

6. On 6 January 1972, the applicant underwent a medical examination. Examining physician notes he had a decreased range of motion in his left arm; however, he was deemed medically qualified for administrative separation.
7. On 6 January 1972, the applicant underwent a mental status evaluation. He was psychiatrically cleared to participate in any administrative action deemed appropriate by the command.
8. The applicant consulted with legal counsel on 13 January 1972, and was advised of the basis for the contemplated trial by court-martial; the maximum permissible punishment authorized under the UCMJ; the possible effects of an undesirable discharge; and the procedures and rights that were available to him.
 - a. Subsequent to receiving legal counsel, the applicant voluntarily requested discharge under the provisions of Army Regulation 635-200 (Personnel Separations – Enlisted Personnel), Chapter 10, for the good of the service. In his request for discharge, he acknowledged he understood that if his discharge request was approved, he could be deprived of many or all Army benefits, he could be ineligible for many or all benefits administered by the Veterans Administration, and he could be deprived of his rights and benefits as a Veteran under both Federal and State laws.
 - b. His counsel submitted a statement in his behalf, stating the applicant planned to be married while on permanent change of station leave; however, complications arising over marriage details forced postponement of the ceremony beyond his scheduled reporting date. Because of an altercation with his executive officer over proposed leave, the applicant mistakenly felt that a request for an extension to his leave would prove futile. He, therefore, remained at home in order to be married, thus rendering himself absent from duty.
9. The applicant's commanders recommended approval of the applicant's request for discharge on 21 January 1972, and further recommended the issuance of a DD Form 258A (Undesirable Discharge Certificate).
10. By legal review on 28 January 1972, the applicant's separation action was found to be legally sufficient for further processing.
11. Consistent with the chain of command's recommendations, the separation authority approved the applicant's request for discharge for the good of the service and ordered the issuance of an Undesirable Discharge Certificate.
12. The applicant was discharged on 9 February 1972. His DD Form 214 confirms he was discharged under the provisions of Army Regulation 635-200, Chapter 10, with Separation Program Number 246 (for the good of the service). He was assigned

Reentry Codes 3, 3B, and 1B. He was discharged in the lowest enlisted grade and his service characterized as UOTHC. He completed 5 months and 21 days of net active service this period with 77 days of lost time.

13. The applicant provides a copy of a self-authored letter dated 2 January 1972, addressed to his wife. He detailed his pending court-martial action and said he would be receiving a under honorable conditions (general) discharge. This letter is provided in its entirety for the Board's review within the supporting documents.

14. The applicant was charged due to the commission of an offense punishable under the UCMJ with a punitive discharge. Subsequent to being charged, he consulted with counsel and requested discharge under the provisions of Army Regulation 635-200, Chapter 10. Such discharges are voluntary requests for discharge in lieu of trial by court-martial.

15. In reaching its determination, the Board can consider the applicant's petition, arguments and assertions, and service record in accordance with the published equity, injustice, or clemency guidance.

16. MEDICAL REVIEW:

a. The Army Review Boards Agency (ARBA) Medical Advisor was asked to review this case. Documentation reviewed included the applicant's ABCMR application and accompanying documentation, the military electronic medical record (AHLTA), the VA electronic medical record (JLV), the electronic Physical Evaluation Board (ePEB), the Medical Electronic Data Care History and Readiness Tracking (MEDCHART) application, and/or the Interactive Personnel Electronic Records Management System (iPERMS). The ARBA Medical Advisor made the following findings and recommendations:

b. The applicant is applying to the ABCMR requesting an upgrade of his 9 February 1972 discharge characterized as under other than honorable conditions. He states:

"My lawyer promised a general discharge with honorable conditions. They offered me a medical discharge if I stayed 2 more months, but I declined."

c. The Record of Proceedings details the applicant's military service and the circumstances of the case. The DD 214 for the period of Service under consideration shows he entered the regular Army on 3 June 1971 and was discharged on 9 February 1972 under the provisions provided in chapter 10 of AR 635-200, Personnel Management – Enlisted Personnel: Discharge for the Good of the Service.

d. The one medical document in the supporting documents shows he was seen for a sore/swollen right elbow after he injured it playing basketball.

e. A Charge Sheet (DA Form 458) shows he was charged with absence without leave from 17 October 1971 thru 2 January 1972.

f. On his 6 January 1972 pre-separation Report of Medical Examination, the provider documented a normal examination except for a decreased range of motion for his left upper extremity. In his self-authored letter, he submitted with the application, the applicant states he sustained an injury to his left arm prior to entering the Army. This is the only defect/diagnosis listed on the form and the provider found the applicant qualified for separation.

g. He underwent a mental status evaluation on 6 January 1972. The physician documented a normal examination and opined the applicant had no significant mental illness and met the medical retention standards of AR 40-501, Standards of Medical Fitness; was able to distinguish right from wrong and adhere to the right; and had the mental capacity to understand and participate in board proceedings.

h. The chief of the clinics summarized these examinations in a 7 January 1972 Disposition Form:

“According to AR 40-501, he is physically and mentally fit for duty without profile limitations. He was and is responsible for his acts, able to understand and participate in board proceedings.”

i. On 13 January 1972, the applicant requested discharge for the good of the service under chapter 10 of AR 635-200. His request was approved by the Commanding General of III Corps and Fort Hood on 28 January 1972.

j. No medical documentation was submitted with the application. JLV does not have a record of the applicant.

k. It is the opinion of the ARBA medical advisor that neither a referral to the Disability Evaluation System nor a discharge upgrade is warranted.

l. Kurta Questions:

(1) Did the applicant have a condition or experience that may excuse or mitigate the discharge? NO

(2) Did the condition exist or experience occur during military service? N/A

(3) Does the condition or experience actually excuse or mitigate the discharge? N/A

BOARD DISCUSSION:

1. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The Board carefully considered the applicant's record of service, documents submitted in support of the petition and executed a comprehensive and standard review based on law, policy and regulation, and published Department of Defense guidance for liberal and clemency determinations requests for upgrade of her characterization of service. Upon review of the applicant's petition, available military record and medical review, the Board concurred with the advising official finding that neither a referral to the Disability Evaluation System nor a discharge upgrade is warranted. The Board determined there is insufficient evidence of mitigating factors to overcome the misconduct of AWOL.

2. The applicant provided no post service achievements or character letters of support for the Board to consider for a clemency determination. Under liberal consideration, the Board carefully reviewed your self-authored statement and your counsel's summary regarding your request for an upgrade. However, the Board found the preponderance of evidence could not be outweighed to mitigate the actions of the applicant. Therefore, the Board denied relief.

3. The Board determined DES compensates an individual only for service incurred condition(s) which have been determined to disqualify him or her from further military service. The DES has neither the role nor the authority to compensate service members for anticipated future severity or potential complications of conditions which were incurred or permanently aggravated during their military service; or which did not cause or contribute to the termination of their military career.

BOARD VOTE:

Mbr 1 Mbr 2 Mbr 3

:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.



I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. Title 10, U.S. Code, section 1552(b), provides that applications for correction of military records must be filed within 3 years after discovery of the alleged error or injustice. This provision of law also allows the ABCMR to excuse an applicant's failure to timely file within the 3-year statute of limitations if the ABCMR determines it would be in the interest of justice to do so.

2. Section 1556 of Title 10, U.S. Code, requires the Secretary of the Army to ensure that an applicant seeking corrective action by ARBA be provided with a copy of any correspondence and communications (including summaries of verbal communications) to or from the Agency with anyone outside the Agency that directly pertains to or has material effect on the applicant's case, except as authorized by statute. ARBA medical advisory opinions and reviews are authored by ARBA civilian and military medical and behavioral health professionals and are therefore internal agency work product. Accordingly, ARBA does not routinely provide copies of ARBA Medical Office recommendations, opinions (including advisory opinions), and reviews to Army Board for Correction of Military Records applicants (and/or their counsel) prior to adjudication.

3. Army Regulation 15-185 (ABCMR) prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the ABCMR. The regulation provides that the ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence. It is not an investigative body.

4. Army Regulation 635-200 sets forth the basic authority for the separation of enlisted personnel. The version in effect at the time provided that:

a. An honorable discharge is a separation with honor and entitles the recipient to benefits provided by law. The honorable characterization is appropriate when the quality of the member's service generally has met the standards of acceptable conduct and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

b. A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

c. Chapter 10 provided that a member who had committed an offense or offenses, for which the authorized punishment included a punitive discharge, could submit a request for discharge for the good of the service in lieu of trial by court-martial. The request could be submitted at any time after charges had been preferred and must have included the individual's admission of guilt. Although an honorable or general discharge was authorized, a UOTHC discharge was normally considered appropriate.

5. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military Discharge Review Boards and Boards for Correction of Military/Naval Records (BCM/NR) regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, Boards shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

//NOTHING FOLLOWS//

